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The end of the celebrated Laidlaw-Sage case has been reached. It has been tried four times and reviewed three times in the intermediate tribunals of New York, but its recent reversal by the New York Court of Appeals upon the vital point in the case, viz., that the evidence was insufficient to sustain a verdict for the plaintiff, and that Laidlaw's injuries were not the proximate result of Sage's act, will no doubt terminate the controversy. The Court of Appeals in its last reversal (Laidlaw v. Sage, 52 N. E. Rep. 679) gives an interesting review of the case and the evidence, the main features of which are no doubt familiar to our readers. The action was for damages sustained by Laidlaw at the time of the destruction of Russell Sage's office, caused by an explosion of dynamite in the hands of a crank named Norcross. The ground upon which plaintiff sought to recover from defendant was that the latter had used him as a shield for protection from the explosion which resulted in terrible injuries to plaintiff and but slight damage to defendant. As the court says, the history of this litigation has shown an evolution in the law held to be applicable to it which is somewhat unusual. Upon the first trial, the complaint was dismissed by the trial court upon the ground that the plaintiff had failed to establish any proper connection between the act of the defendant and the independent act of Norcross which caused the injury. In other words, it held that, under the principles of law applicable to the subject, the acts of the defendant were not shown to be the proximate cause of the plaintiff's injury. That judgment was reversed by the general term of the supreme court, which in effect held that no question of proximate cause was involved; that if the defendant put his hand upon or touched the plaintiff, and caused him to change his position with an intent to shield himself, he was guilty of a wrongful act toward him; that, if the plaintiff was injured by the happening of the catastrophe, the burden of proof was upon the defendant to establish the fact that his wrongful act did not in the slightest degree contribute to any part of the injury which the plaintiff sustained by reason of the explosion; and that it was not necessary for the plaintiff to show that he would not have been so severely injured if he had been left standing in his original position. Upon the second trial the plaintiff had a verdict. The court seems to have charged the jury in accordance with the principles laid down by the general term upon the first appeal. Upon that trial, however, the defendant's counsel requested the court to charge: "If the jury find from the evidence that the defendant did take the plaintiff, and use him as a shield, but that this action was involuntary, or such as would instinctively result from a sudden and irresistible impulse in the presence of a terrible danger, he is not liable to the plaintiff for the consequences of it." That request the court refused, but added: "I will charge it; that the essence of the liability must be a voluntary act." Upon the second appeal that question having been thus sharply presented, the general term again reversed the judgment, upon the ground that the court erred in refusing to charge that request. Upon the third trial the jury disagreed. Upon the last trial, which has just been reviewed, the trial court disregarded the former decisions of the general term, and charged that the measure of the plaintiff's damages was the difference between those he actually sustained, and such as he would have received if he had not been interfered with, and that the burden of proving such damages was upon the plaintiff. It also charged that if the defendant involuntarily put his hands upon the plaintiff in a moment of great excitement, confronted with immediate and serious danger, without meaning to interfere with him, he would not be responsible. But it submitted the question whether the act of the defendant was deliberate and intentional to the jury, calling its attention to the fact that the defendant testified that "he was in perfect possession of his senses, recollected everything that was done, that everything he did there was done intentionally," and then charged that if, under those circumstances, he voluntarily put out his hand, and touched the plaintiff, a cause of action was made out, and the plaintiff was entitled to a verdict. In this portion of its charge, the court assumed, and stated to the jury, that the defendant testified that

everything he did was done intentionally, as proof of his having intentionally interfered with the person of the plaintiff. As before stated, the court reversed the case upon the ground of insufficient evidence to sustain a verdict, and that defendant's act was not the proximate cause.

Various rulings of the trial court, in the course of the cross-examination of the defendant by Mr. Choate, were criticised, the Court of Appeals holding that counsel for plaintiff was permitted to go beyond the legitimate bounds of proper cross-examination in several respects. Thus the plaintiff was allowed to show by the defendant, upon his cross-examination, the amount of property possessed by him, its character and his business; the number of railroads the defendant operated, the banks in which he was a director, that he dealt in stocks, that he loaned money and other details of his affairs. This was held to be improper. "It has ever been the theory of our government" says the court, "and a cardinal principle of our jurisprudence, that the rich and poor stand alike in courts of justice, and that neither the wealth of the one nor the poverty of the other shall be permitted to affect the administration of the law. Evidence of the wealth of a party is never admissible, directly or otherwise, unless in those exceptional cases, where position or wealth is necessarily involved in determining the damages sustained."

The court felt called upon to say something on behalf of the plaintiff, who had been so seriously injured and who had received the favor of the lower and appellate courts on several occasions:

"It is impossible to consider the plaintiff's injuries without a feeling of profound sympathy. His misfortune was a severe one, but sympathy, although one of the noblest sentiments of our nature, which brings its reward to both the subject and the actor, has no proper place in the administration of the law. It is properly based upon moral or charitable considerations alone, and neither courts nor juries are justified in yielding to its influence in the discharge of their important and responsible duties. If permitted to make it the basis of transferring the property of one party to another, great injustice would be done, the foundation of the law disturbed, and anarchy result. Hence, every proper consideration requires us to disregard our sympathy and decide the questions of law presented according to the well-established rules governing them."

NOTES OF IMPORTANT DECISIONS.

MORTGAGE—NOTES—ASSIGNMENT—PAYMENT—BONA FIDE PURCHASER.—It was held by the Supreme Court of Appeals of Virginia, in Cussen v. Brandt, that where notes were delivered to a bank for collection, and by it surrendered, uncanceled, to one who was under no obligation to pay them, and who informed the bank that he did not wish to pay them, but to purchase them as an investment, and who paid full value therefor, not knowing that the bank held them for collection, the transaction was a purchase, and not a payment; and the notes take precedence over a lien created by a deed executed subsequent to the deed of trust securing them; that one who purchases a note after maturity takes it subject to all the equities to which it was subject in the hands of the transferror, and that where the holder of secured notes placed some of them, which were due, in a bank, for collection, and they were sold by the bank, with the restrictive collection indorsement canceled, but still legible, to one who had no actual knowledge that the bank held for collection only, and the bank paid the proceeds of the notes to the former owner, who believed the notes had been paid, and the security for the unpaid notes thereby enhanced, the lien of the notes so purchased is subordinate to the notes remaining unpaid in the hands of the original owner. The court says:

"Whether a transaction like this is a payment or a purchase is a question of intention—of fact rather than of law—and is to be settled by the evidence. Wood v. Deposit Co., 128 U. S. 416, 9 Sup. Ct. Rep. 131. It is undoubtedly true, as contended by counsel for appellant, that it is essential to a sale that both parties should consent to it; but it is as difficult to see how there can be a payment, and an extinguishment thereby of a debt, by a stranger who is under no obligation to pay, when there is no intention to pay, as it is to see how there can be a sale without an intention to sell. This assent, however, need not be expressed, nor shown by direct evidence. It may be inferred from the circumstances attending the transaction, and often is. Ketchum v. Duncan, 96 U. S. 659.

"It appears from the record that Elam, who was neither a party to, nor under any obligation to pay, the notes, did not intend to satisfy or discharge, but to purchase, them as an investment; that he informed the bank of such intention; that with full knowledge of his purpose to purchase

for an investment, and not to pay, it received his money, and delivered the notes to him uncanceled. These facts and circumstances show that Elam intended to purchase, and that the City Bank of Richmond tacitly assented to the sale. Upon no other theory can its conduct in receiving Elam's money, and delivering the notes uncanceled, with full knowledge that he intended to purchase them as an investment, and not to pay them, be explained.

"The authorities hold that a transaction like that under consideration is a purchase, and not a payment. It was said by the Supreme Court of the United States, in a case similar to this, upon the question under consideration, that 'in cases like that before us, where the intention to continue the existence of the note, and not to cancel it by payment, is made evident when the money is paid to the collecting agent appointed to receive it, and the owner of the note receives the amount due to him, the authorities sustain the transaction as a purchase.' Dodge v. Trust Co., 93 U. S. 379; Ketchum v. Duncan, 96 U. S. 659; Carter v. Burr, 113 U. S. 737, 5 Sup. Ct. Rep. 713; Swope v. Leffingwell, 72 Mo. 348; McDonnell v. Burns, 28 C. C. A. 174, 83 Fed. Rep. 866; Brice's Appeal, 95 Pa. St. 150.

"The case of Bank v. Lay, 80 Va. 436, which was much relied on by the appellant's counsel to sustain his contention that the notes must be considered as paid, while clearly right upon the facts of that case, sheds but little, if any, light upon this, because of the material difference in the facts of the two cases. In each case the party who had taken up the paper was a stranger to it, but in that case he was, by another contract, expressly and primarily bound to pay it, while in this case he was neither a party to the paper, nor bound in any way for its payment.

"When one who is primarily bound for the payment of a note takes it up, it is a payment—an extinguishment—of the note, no matter what his intention may have been. 2 Daniel, Neg. Inst. §§ 1236, 1238; Bank v. Lay, 80 Va. 440.

"The notes in question having been purchased by Elam, they are not extinguished, as appellant contends, but are existing liens upon the trust subject, and are entitled to priority over the deed of trust given to secure her debt. The trial court so held, and its decree upon that question must be affirmed.

"Under rule 9 of this court, the appellees Elam and Grimmell insist that the decree appealed from is erroneous in so far as it provides that Marburg shall have priority over them, and shall be first paid out of the proceeds of the trust subject, and ask that the decree in that respect be correeted. This contention we do not think can be sustained. The notes held by them respectively were purchased by Elam under circumstances which make it equitable that their payment should be postponed until the notes held by Marburg have been paid. When Elam acquired them, one note was overdue, and held by the City Bank for collection. It had no authority to sell them, but of this Elam had no actual knowledge; but he did have notice of circumstances which were sufficient to put him upon inquiry, which inquiry would have disclosed the facts of the case. The note for $2,690 being overdue when Elam purchased it, he acquired nothing but the actual right and title of the City Bank. He took it subject to all the equities to which it was subject in its hands. Arents v. Com., 18 Grat. 750; Davis v. Miller, 14 Grat. 1; 1 Daniel, Neg. Inst. § 724a.

"The other note had not yet matured, but it, as well as the $2.690 note, had upon it the restrictive indorsement of the Baltimore bank, canceled, according to Elam's statement; but still both indorsements were legible through the pen marks by which they were canceled. These indorsements destroyed the negotiability of the notes, and were notice to persons dealing with the City Bank that it held them for collection only. The cancellation of the indorsements changed the character of the notes, and restored their negotiability. This was a material change in the character of the notes, apparent upon their face, sufficient to put Elam upon inquiry (Angle v. Insurance Co., 92 U. S. 330; 1 Daniel, Neg. Inst. [4th Ed.] § 795), which inquiry, if pursued, would have disclosed the fact that the City Bank only held the notes for collection, and had no authority to sell them. Elam made no such inquiry; gave no notice to Marburg of his purchase; allowed him to remain under the belief that the notes had been paid, and that the security for the payment of other notes held by him was thereby increased, which latter object was no doubt the chief reason why he refused to sell the larger note before its renewal. If, as Elam and Grimmell contend, the trust property will sell for a sum sufficient to satisfy the notes held by Marburg and themselves, then no injury will result to them, except a delay of two or three years in getting their money, as the property, by consent, is to be sold for one-fourth cash, and the residue payable in one, two and three years. If, on the other hand, it does not sell for a sufficient sum to pay all the notes, we do not think it would be equitable or just, under all the circumstances of the case, that Marburg should suffer loss resulting from Elam's negligence when he purchased the notes, and the delay of the holders in asserting their claim."

CRIMINAL LAW—HOMICIDE—SELF-DEFENSE—INSTRUCTIONS.—One of the questions involved in the decision of the case of Magness v. State, 50 S. W. Rep. 554, by the Supreme Court of Arkansas, was as to the correctness of the instructions of the trial court regarding self-defense. The defendant asked, and the court refused to give, the following instructions: "You are instructed that, to justify a killing in self-defense, it is not essential that it should appear to the jury to have been necessary. It is sufficient, if the defendant honestly believed, without fault or carelessness on his part, that the danger was so urgent and press-

ing that the killing was necessary to save his own life, or prevent great bodily injury."

And the court modified and gave it as follows: "You are instructed that, to justify a killing in self-defense, it is not essential that it should appear to the jury to have been necessary. It is sufficient, if the defendant honestly believed, without fault or carelessness on his part, that the danger was so urgent and pressing that the killing was necessary to save his own life, or prevent great bodily injury, and the acts of the deceased were such as to induce a reasonably prudent person to believe the necessity existed."

"The court erred," says the supreme court, "in modifying the instructions asked by the defendant, and copied in this opinion, in the manner it did. Our statutes (Sand. & H. Dig. § 1676), say, 'In ordinary cases of one person killing another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save his own life, or to prevent his receiving great bodily injury, the killing of the other was necessary.' But to whom must it appear that danger was urgent and pressing?

"In Clark's Criminal Law it is said: 'The authorities are overwhelmingly to the effect that it need only be apparently imminent, and that whether or not it was so in any particular case is to be determined by looking at the circumstances from the standpoint of the accused; taking into consideration the relative strength of the deceased and his assailant, and all the other circumstances. If to the accused there was a reasonably apparent necessity to kill, to save himself, he will be excused, though to some one else there might not have seemed to be any such necessity, and though in fact there was no such necessity. Most of the cases are to the effect that the circumstances must have been such as to excite the fears of a reasonable man, and the accused must have acted as an ordinarily cautious and dangerous man would have acted, or, in other words, there must have been a reasonable appearance of danger, or reasonable grounds to believe there was danger. But the court and jury must look at the circumstances from the standpoint of the accused. A coward will fear danger unreasonably, and the mere fear of a coward, without reason therefor, is not enough. A person must not be guilty of negligence in coming to the conclusion that he is in danger.' Clark, Cr. Law, p. 152.

"In McClain on Criminal Law it is said: 'The person assailed, in acting upon appearance, and taking the life of his fellow man, does so at his peril, and will not be excused unless the circumstances are such as would induce a reasonable man to believe it necessary to save his own life, or save himself from great personal injury. But the reasonableness of the apprehension is to be judged from the standpoint of the defendant at the time, and not from that of the jury. By this is not meant, however, that the jury should ask themselves the question what they would have done under the circumstances surrounding the accused at the time, but that, as sworn officers of the law, they should look at all the circumstances surrounding the accused, as they appeared to him, and ask themselves: (1) Did the accused believe himself in imminent danger? and (2) were there circumstances such as would justify such a belief in the mind of a person of ordinary firmness and reason?' 1 McClain, Cr. Law, § 306.

"Wharton, in his work on Criminal Law, says: 'It is conceded on all sides that it is enough if the danger which the defendant seeks to avert is apparently imminent, irremediable and actual. But apparently as to whom? * * * The answer given by several of our courts to this question is that, if a "reasonable man" would have held that the danger was apparent, then the danger will be treated as apparent. * * * But who is the "reasonable man" who is thus invoked as the standard by which the 'apparent danger' is to be tested? What degree of reason is he to be supposed to have? If he be a man of peculiar coolness and shrewdness, then he has capacities which we rarely discover among persons fluttered by an attack in which life is assailed; and we are applying, therefore, a test about as applicable as would be that of the jury who deliberate on events after they have been interpreted by their results. Or, if we reject the idea of a man of peculiar reasoning and perceptive powers, the selection is one of pure caprice, the ideal reasonable man being an undefinable myth, leaving the particular case ungoverned by any fixed rules. And that this ideal reasonable man is an inadequate standard is shown by a conclusive test. Suppose the ideal reasonable man would at the time of the conflict have believed that a gun aimed by the second was loaded, whereas, in point of fact, the defendant knew the gun was not loaded; would the defendant be justified in shooting down an assailant, approaching with a gun the defendant knows to be unloaded, simply because the ideal reasonable man would suppose the gun to be loaded? No doubt that in such case no honest belief of the ideal reasonable man would be a defense to the defendant who knew that the belief was false, and that he was not really in danger of his life. And, if the belief of the ideal reasonable man be not admissible to acquit, *a fortiori* it is inadmissible to convict. * * * Viewing the law in this respect on principle, we are compelled to hold that the question of apparent necessity can only be determined from the defendant's standpoint.' 1 Whart. Cr. Law (10th Ed.), §§ 488, 489, 491.

"Mr. Bishop says: 'In other words, and with reference to the right of self-defense, and the not quite harmonious authorities, it is the doctrine of reason, and sufficiently sustained in adjudication, that, notwithstanding some decisions apparently adverse, whenever a man undertakes self-defense he is justified in acting on the facts as they appear to him. If, without fault or carelessness, he is misled concerning them, and defends himself correctly according to what he thus supposes the facts to be, the law will not punish him, though

they are in truth otherwise, and he has really no occasion for the extreme measure.' 1 Bish. New Cr. Law, § 305, subd. 2.

"In Shorter v. People, 2 N. Y. 193, Mr. Justice Bronson, delivering the opinion of the court, said: 'When one, who is without fault himself, is attacked by another in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design to take away his life or do him some great bodily harm, and there is reasonable ground for believing the danger imminent that such design will be accomplished, I think he may safely act upon appearances, and kill the assailant, if that be necessary to avoid the apprehended danger, and the killing will be justifiable, although it may afterwards turn out that the appearances were false, and there was in fact neither design to do him serious injury, nor danger that it would be done. * * * I cannot better illustrate my meaning than by taking the case put by Judge, afterwards Chief Justice, Parker, of Massachusetts, on the trial of Thomas O. Selfridge: "A, in the peaceable pursuit of his affairs, sees B walking rapidly towards him with an outstretched arm, and a pistol in his hand, and using violent menances against his life as he advances. Having approached near enough in the same attitude, A, who has a club in his hand, strikes B over the head before, or at the instant, the pistol is discharged; and of the wound, B dies. It turns out that the pistol was loaded with powder only, and that the real design of B was only to terrify A." Upon this case the judge inquires, "will any reasonable man say that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine must require that a man so attacked must, before he strikes the assailant, stop and ascertain how the pistol was loaded—a doctrine which would entirely take away the right of self-defense. And when it is considered that the jury who try the cause, and not the party killing, are to judge of the reasonable grounds of his apprehension, no danger can be supposed to flow from this principle." The judge had before instructed the jury that "when, from the nature of the attack, there is reasonable ground to believe that there is a design to destroy his life, or commit any felony upon his person, the killing of the assailant will be excusable homicide, although it should afterwards appear that no felony was intended." Self. Tr. p. 160; 1 Russ. Crimes (Ed. 1824), p. 699; *Id.* (Ed. 1836). p. 485, note. To this doctrine I fully subscribe. A different rule would lay too heavy a burden upon poor humanity. * *'

"In Batten v. State, 80 Ind. 394, 404, Chief Justice Elliott, in a well-considered opinion, said: 'In all of the instructions which touch upon the point, the trial court declares that the appearances of danger must be such as would create in the mind of a man of ordinary prudence an apprehension of immediate and urgent danger. An ideal man is thus made the standard by which the guilt or innocence of the accused is to be determined. Is this correct? Should not the standard be the man himself? Ought regard to be had to real things, the man, the situation, the surroundings, or should some imaginary person be taken as the guide? There is some conflict in the cases. Our conclusion is that the question must be decided upon the appearances present to the eyes and mind of the accused himself, and upon the belief actually and in good faith entertained by him. Ultimately, the question whether there were appearances reasonably indicating great and immediate peril, and whether they did actually inspire the accused with the honest belief of urgent and pressing danger, is to be decided by the jury. But the court is not to set up, as the standard by which the appearances are to be measured or the belief tested, an ideal man. In cases involving life, actual, real things, rather than ideal, should be taken as standards and tests. It is much safer and better to take the real man, the actual situation, and the real surroundings. There is not, of course, to be any inquiry as to whether he was a brave man or a coward; nor are kindred matters to be investigated.'

"In Smith v. State, 59 Ark. 132, 26 S. W. Rep. 712, this court said: 'But to whom must it appear that the danger was urgent and pressing? According to reason and the weight of authority, it must so appear to the defendant. To be justified, however, in acting upon the facts as they appear to him, he must honestly believe, without fault or carelessness on his part, that the danger is so urgent and pressing that it is necessary to kill his assailant in order to save his own life, or to prevent his receiving a great bodily injury. He must act with due circumspection. If there was no danger, and his belief of the existence thereof be imputable to negligence, he is not excused, however honest the belief may be.'

"There ought not to be any controversy about this doctrine. A man, when threatened with the loss of life, or great bodily injury, is compelled to act upon appearances, and determine from the circumstances surrounding him at the time as to the course he shall pursue to protect himself. When the danger is pressing and imminent, his own safety demands immediate and prompt action. Delay may involve the loss of his life, or great bodily injury. In such cases he is, from necessity, the judge of his own action. There is a limitation, however, upon this right. The law imposes upon him the duty to act with due circumspection—without fault or carelessness on his part. If he takes the life of his assailant, the duty devolves upon the jury trying him to determine whether he has done so. To decide in the affirmative, they must find that circumstances and appearances present to him at the time of the killing were sufficient to induce in him a reasonable belief that he was in actual and imminent danger of losing his life, or suffering great bodily injury. Unless such was the case, it cannot be said that he acted without fault or carelessness, or that he was justified or excused. It is not sufficient, how-

ever, to justify or excuse the killing, that the circumstances and appearances were sufficient to inspire the accused with such a belief; and the belief must also have been actually and in good faith entertained by him. If he acted from real and honest convictions, induced by reasonable evidence, he cannot be held criminally responsible to the extent of the actual danger. 'A contrary rule would make the law of self-defense a snare and a delusion. It would become but a mockery of the sacred right of self-preservation.'

"The trial court erred in modifying the instructions asked by the defendant, and in giving them as modified. The instruction asked by the defendant, and first copied in this opinion, is not a correct statement of the law; but the errors contained in it, as a whole, were prejudicial to the defendant. The other instruction, as asked, was correct, as a legal proposition; but, if it had been given in the form asked, it should have been explained by additional instructions, in order to enable the jury to understand it fully."

THE CONFIRMATION OF A TAX OR ASSESSMENT ON REAL ESTATE, ETC.

The confirmation of a tax or assessment on real estate after its sale at public auction, and before confirmation by court of sale and delivery of deed, is an incumbrance or lien payable by seller, where the real estate so sold was bought free and clear of all liens and incumbrances.[1]

There has been, and still exist, great diversity of opinion in all courts as to when the title to real estate actually passes, when sold at public auction, so as to make clear when and upon whom does a lien fall after the property is sold at public auction, and before sale is confirmed by the court and delivery of deed, a lien attaches to the property. The question most frequently arises where property has been assessed and the assessment roll made up, and while the *status* of the assessment so exist the property is sold at public auction, after which and before confirmation of sale by the court and delivery of the deed to purchaser the assessment and taxes are confirmed, the question being whether the assessment made previous to the bid is a lien on the property bought at public auction previous to the confirmation of the assessment which occurred after the bid, but before the confirmation of sale by the court, and previous to delivery of deed; does it fall upon the seller or purchaser to pay such a lien, the lien of course not existing in fact until the same is confirmed. It is a well known principle that an assessment on real estate is not a lien upon the same until the assessment is confirmed, having been first made upon the assessment roll and been reported by the assessors to the supervisors of assessments or a similar board duly organized for the purpose, and said board, from the report of the assessors, upon which the board of supervisors act in apportioning the tax, assesses what the tax shall be on the property, and the tax so determined upon is confirmed by the supervisors of assessments or a similar board.

Whereas the aforesaid, as to what constitutes a tax on property growing out of an assessment, is a complete statement of the elements necessary to constitute such a tax, still I feel subject to criticism when I say that it is an undisputed law that an assessment is not a tax until all of the elements just stated have been complied with, and although that is practically the case, yet it has been strongly contended that an assessment is a tax as soon as the property is assessed for the purpose of taxation; it is therefore very obvious that as an assessment is at least a lien on the property subsequent to the bid, and when the tax under the assessment is confirmed which occurred previous to the confirmation of the sale by the court and delivery of the deed, it is a tax payable by the seller. A tax under an assessment is not a lien on real estate until the tax has been confirmed. Some authorities go further and say that in consequence of ownership of real estate the purchaser is not liable for tax and assessment where the property is sold free and clear of all liens and incumbrances; such assessment being made previous to the sale thereof, such tax and assessment being a lien on the property for which the owner is liable at the time of the completion and delivery of the assessment roll, although the amount of tax was not ascertained and filed for two months afterwards, yet the foundation of the liability was complete. If a person owning property at the time fixed by law for determining who shall

[1] Barlow v. St. Nicholas National Bank, 63 N. Y. 399, says: "Entry of land in an assessment roll does not constitute an incumbrance thereon and the assessment or subsequent levy of a tax thereon is not a breach of covenant against incumbrance contained in a deed of land executed after completion of the assessment roll but before levy of tax."

be taxed therefor as owner, and he afterwards and before confirmation of taxes disposes of the property, the person who was owner at the time fixed by law for determining who should be taxed therefor as owner is liable for the tax so assessed, the same being a lien upon the property from the time of the completion of the assessment roll, notwithstanding that the amount of tax had not been ascertained and fixed.[2]

If at auction the purchaser of real estate purchases free and clear of all liens and incumbrances, and subsequently has a tax assessment confirmed against the property so purchased which was assessed previous to the bid and existed at the time, such tax is considered a lien upon property at the time of sale, it would work an obvious injustice and an inexcusable hardship upon every purchaser to have to pay all the hidden and latent incumbrances which, if universally the case, would result in real property never being purchased at auction. There is no doubt but that a great blunder exist in the maintenance and support of a doctrine, that property bought free and clear of all liens and incumbrances and at a time subsequent to such purchase, and upon and after the bid the fact is developed that taxes had been assessed previous to the conveyance, but confirmed just after the bid and previous to the confirmation of sale by the court and delivery of deed, that for all taxes so made upon property previous to the purchase thereof free and clear of all liens and incumbrances, that the same is a lien against the property after purchased, but not before, and that such an amount assessed and practically due previous to the bid is not a lien to be paid by the seller.

It is clear that where the owner of property disposes of the same at auction and while there is an existing assessment out of which a tax is payable, and after such disposition and previous to the confirmation of sale by the court and delivery of deed the tax is confirmed, that the tax is a lien upon the property at the time of assessment, and that the owner at the time of assessment is liable for the taxes growing out of the same, where the property so assessed is conveyed free and clear of all liens and incumbrances, the amount being a lien at the time the assessment was made.

The next point which presents itself and is really the cardinal question and determines when the lien in question really does attach is, whether when property is sold at auction the title passes upon the closing of the bid and upon the auctioneer declaring the highest bidder as the purchaser and the contract of sale being signed by the purchaser and the auctioneer signing in behalf of and as the agent of the seller, or whether it passes subsequent to the bid as aforesaid and upon the court confirming the sale and delivery of the deed.[3]

Every conceivable and logical reasoning of the law points clearly to the fact that ordinarily title does not pass in the conveyance of real estate until the deed is signed, sealed and delivered, the three elements being absolute prerequisites to the complete conveyance of real property; but in this particular case before us, which so often presents itself to the different courts, goes further, and is a question whether in addition to the last named elements, the court has to confirm the sale made at auction before the title can clearly pass, and it undoubtedly has in order for the purchaser to have a clear and perfect title.

FRANK TRENHOLM.

[2] Rundall v. Sadey, 40 N. Y. 513, says: "Previous to a conveyance with warranty and assessment has been completed, after conveyance collection can be had from grantor."

[3] Am. & Eng. Enc. of Law, Vol. 17, p. 794, says: "Confirmation of sale by court is essential; when the sale is made it must be reported to the court where it may be either approved and confirmed or vacated and set aside, the purchaser being only a bidder, and the sale not being complete until the bid has been accepted by a confirmation of the sale."

NEGLIGENCE — STREET CARS — INJURIES TO PERSON ON TRACK — PROXIMATE CAUSE — VEHICLES — RIGHT OF WAY.

DE LON v. KOKOMO CITY ST. RY. CO.

Appellate Court of Indiana, May 18, 1899.

1. Where the driver of a sprinkling cart saw a street car approaching, but erroneously thought he could cross the track before it reached him, there being no sudden or unexpected peril, his act was the proximate cause of his injury.

2. There can be no recovery for injuries, where plaintiff's negligence proximately contributed thereto, unless defendant's negligence was willful.

3. The right of a vehicle to cross a street car track is subject to the superior right of way of the street car company.

ROBINSON, J.: Appellant sued appellee to recover damages for wrongfully and negligently running a car against appellant's wagon, throwing him to the ground and injuring him. The paragraph of the complaint to which the evidence seems to have been addressed avers that the negligence consisted in appellee's servants running a car against appellant's wagon while he was attempting to cross the car tracks; that after appellee's servant in charge of the car saw appellant attempting to drive across, he increased the speed of the car; that, after such servant saw and knew of appellant's peril, he could have checked the speed of the car and stopped the same in time to have avoided all injury, but that such servant carelessly and negligently failed to apply the brakes or to try to check the car until it was almost against appellant's wagon; and that such servant carelessly and negligently ran the car with great force against appellant's wagon, throwing him to the ground and injuring him. Appellee's car line runs north and south on Main street, crossing at right angles Sycamore and High streets, which are about 60 feet wide and 280 feet apart. High street is south of Sycamore, and Armstrong alley midway between them. The accident happened about 66 feet south of High street. Main street is slightly down grade from Sycamore street. Appellant was sprinkling streets, and was driving a wagon drawn by two horses. It was about fourteen feet from the front end of the tank to the horses' heads, and the tank about 10 feet long. The wagon weighed 2,400 pounds, and the tank would hold 4,800 pounds of water, and was about three-fourths full at the time. At the place where the accident occurred, the planks at the sides of the rails were worn, leaving the rails about one inch and a half above the surface. Appellant sprinkled Main street to a point 66 feet south of High street. Appellant testified: That he started south on the east side of Main street from Sycamore, and went on down to High street. "When I got down to where we turn—where we had made it a business to turn—this car was close to Armstrong alley; * * * and I turned my horses square, and was crossing around to the west. I thought I had ample time, and would have had, if they had slowed that car down. If they had slowed that car, I should have got out of the way. When they got on High street, or just approaching High street, they rang the bell at me. At this ringing of the bell, I tried to get my team off the track. * * * I was crossing as I had many times crossed the track when they were approaching High street. Well, I could not check that load of water. I had a heavy load of water, of course, to get back up the grade." That the car struck the hind wheel of his wagon and threw him to the ground. That he had looked back when at High street, and knew the car was coming south. He knew it was down grade from Sycamore street, and was well acquainted with the conditions of the street where the accident occurred. The car had stopped at Sycamore street to take on passengers. When he first saw the car it was running two or three miles an hour until it got to the alley. When it was nearing High street it was running about six miles an hour. He could see the car plainly. "The motorman rang the bell when he saw me square across the track. All the time he rang the bell strongly, but I was trying to get away." That before he started to drive across he looked, and saw the car coming, but "I thought I had ample time to get across, or I should not have done it." There was no particular reason why he should cross in front of the car.

We must conclude, from appellant's own evidence, that he was not free from fault. He saw the car coming, and thought he could cross before it reached him. There was no sudden or unexpected peril. Nothing required him to turn across the track. He could have remained in safety where he was until the car passed. He tried to cross, and incurred the hazard when there was no reason for doing so. He voluntarily drove upon the track in front of the approaching car, and simply miscalculated the time it would take him to cross and get out of the way. There is no escape from the conclusion that his act was a proximate cause of the injury. Sutherland v. Railroad Co., 148 Ind. 308, 47 N. E. Rep. 624; Belton v. Baxter, 54 N. Y. 247; Railroad Co. v. Helvie (Ind. App.), 53 N. E. Rep. 191. But it is very earnestly argued by counsel that, even if appellant acted imprudently in driving across the track, appellee was nevertheless liable, if the motorman saw, or could have seen, appellant's carelessness and peril, and could have checked the car and prevented the injury, but carelessly and negligently failed to do so. And the refusal of the court, upon request, to so instruct the jury, is the principal question presented on this appeal. It is the well-settled rule in this State that, where negligence is the issue, it must be a case of unmixed negligence. If the want of ordinary care and prudence contributed to the injury, or if ordinary care was not exercised to prevent the injury, there can be no recovery. Railroad Co. v. Gruff, 132 Ind. 13, 31 N. E. Rep. 460; Railroad Co. v. Lockridge, 93 Ind. 191, and cases cited. The doctrine as announced by appellant's counsel has been expressly denied by this court in Stone Co. v. Stewart, 7 Ind. App. 563, 34 N. E. Rep. 1019. In Evans v. Express Co., 122 Ind. 362, 23 N. E. Rep. 1039, the court said: "Where the negligence of two persons is contemporaneous, and the fault of each operates directly to cause the injury, the rule deducible from the authorities is that the plaintiff cannot recover, if by the exercise of ordinary care on his part he might have avoided the injurious results of the defendant's negligence. Mayhew v. Burns, 103 Ind. 328, 2 N. E. Rep. 793; Murphy v. Deane, 101 Mass. 455; Bigelow, Torts, 311. Where a collision occurs in

a public street by the united and contemporaneous negligence of two persons, neither can recover from the other for a resulting injury." If the motorman, when he saw appellant on the track, had reason to believe that he was unconscious of the danger, or unable to avoid it, it was his duty to use every reasonable effort to stop the car and arouse the attention of appellant. And the evidence is not disputed that the motorman was at his place of duty, and, as soon as appellant's presence was discovered, the gong was sounded; that the brake was applied until the car wheels were slipping; that the brakes were then released, and the electric current reversed; and this is shown by the evidence to be the proper method of stopping the car in the shortest possible space. So that it is seen that the facts of this case do not bring it within the principle contained in the instruction requested.

We have carefully considered each and all the instructions given by the court to the jury. Counsel take exception to certain parts of some of them. It is a familiar rule that instructions are to be taken as an entirety, and are not to be judged by detached sentences; and if, when taken together, they fairly and correctly state the law, the cause will not be reversed, even if some of the instructions, considered alone, may seem incorrect. Each particular instruction must be considered and construed in connection with all other instructions given. The instructions are quite long, and no good purpose would be subserved in setting them out. Taking them as a whole, we believe they state the law fairly and correctly, and that they are applicable to the evidence. The evidence is undisputed that the motorman did all that could be done to stop the car and avert the collision from the time he saw appellant start across. There is no evidence that the speed of the car was increased after the motorman saw, or could have seen, appellant start across. By appellant's evidence, the car was within 250 feet of him before he started to cross. Other witnesses say the car was even closer than that. Nothing happened to appellant after he started across the track to increase his peril. The motorman had the right to presume he would pass on over and out of the way, but he was still bound to use care to avoid striking him, and the evidence is not disputed that the motorman did all he could to stop the car as soon as he saw appellant's peril. Appellant had the right to cross the track where he did cross it, and to use the street at that place, but his right to use it as a part of a public street was subject to the superior right of the company as to priority of passage. Young v. Railroad Co., 148 Ind. 54, 44 N. E. Rep. 927, and 47 N. E. Rep. 142. See Fenton v. Railroad Co., 126 N. Y. 625, 26 N. E. Rep. 967; Railway Co. v. Enslen (Ky.), 38 S. W. Rep. 850; Thomas v. Railway Co., 132 Pa. St. 504, 19 Atl. Rep. 286. If appellant's negligence proximately contributed to his injury, he cannot recover, no matter how negligent the appellee may have been, unless the negligence of appellee was such as to imply a willful intention to inflict the injury. Cadwallader v. Railway Co., 128 Ind. 518, 27 N. E. Rep. 161; Korrady v. Railway Co., 131 Ind. 261, 29 N. E. Rep. 1069. The case made by the evidence is the ordinary case of negligence, and, as the evidence shows that the negligence of appellant proximately contributed to his injury, there could be no recovery, even if it were conceded that appellee was culpably negligent. See Railway Co. v. Hammock, 113 Ind. 1, 14 N. E. Rep. 737; Railway Co. v. Hill, 117 Ind. 56, 18 N. E. Rep. 461.

From the whole record, we must conclude that the verdict of the jury was right. Judgment affirmed.

NOTE.—*Recent Cases on Proximate Cause of Injurg by Street Car.*—It cannot be assumed, as matter of law, that one run into by a street car would, by listening, have heard it in time to have avoided the accident; it having given no signal, and there having been a noise from the running of a car just passing in the opposite direction. Citizens' St. Ry. Co. v. Albright (Ind. App.), 42 N. E. Rep. 238. In an action for the death of plaintiff's daughter, a child 5 1-2 years old, by being run over by defendant's horse car, the evidence, which was chiefly directed towards showing that the driver was negligent in failing to see deceased's danger and stop the car in time, failed to show such negligence, but there was evidence that the car brake was slightly out of repair, and also that the child first came in contact with the flank of the mule, and fell. The driver, who had testified that the child first struck the dashboard, and that it was then impossible to stop the car in time to avoid the accident, stated that, perhaps, had the child first struck the mule, and had the brake been in good condition, he could have avoided the accident. There was evidence that it generally required from four to six feet to stop a car, but there was no evidence as to the distance from the wheel by which the child was struck to the point where she came in contact with the mule. Held, that the evidence was insufficient to show that the defective condition of the brake contributed to the injury. Gannon v. New Orleans City & Lake R. Co., 48 La. Ann. 1002, 20 South. Rep. 223. In an action against a street-railway company, based on negligence in failing to stop a car before passing over a railroad crossing, in violation of Act of May 4, 1891, it must appear that the injury was directly caused by such negligence. Cincinnati St. Ry. Co. v. Murray's Admx. (Ohio Sup.), 42 N. E. Rep. 596. Plaintiff, driving west on defendant's west-bound track, on signal from a car in the rear, turned to the east-bound track, on which no car was in sight, and being prevented from turning to the west track again after the car had passed by teams following it, he drove slowly along, waiting an opportunity to turn to the west track, and while he was so doing a car came in sight, running at a reckless rate of speed, which ran into him, though the motorman endeavored to stop it. Held, that the teams following close upon the west-bound car were not an intervening cause of the injury, so as to relieve the company from the consequence of running the car at a reckless rate of speed. Harper v. Philadelphia Traction Co., 175 Pa. St. 129, 38 W. N. C. 349, 34 Atl. Rep. 356. Where parents knowingly allow their child to go into a place of danger, or neglect to exercise ordinary care in keeping a knowledge of its whereabouts and control of its ac-

tions, and it gets into a place of danger, and its exposure thereto, rather than, or equally with defendant's negligence, is the proximate cause of its death, there can be no recovery; not so, however, if their negligence was a remote cause of the injury, which, notwithstanding their negligence, might have been prevented by the exercise of ordinary care on the part of defendant's employees operating its street cars. Dan v. Citizens' St. R. Co. (Tenn. Sup.), 41 S. W. Rep. 339. That one driving along a street, after crossing a street car track, stopped so near it, to converse with a person, that there was not room enough for a car to pass, is not negligence contributory to the collision, but merely a "condition." Redford v. Spokane St. Ry. Co. (Wash.), 15 Wash. 419, 46 Pac. Rep. 650. In an action to recover damages from a surface-railway company for alleged negligence, resulting in in the death of plaintiff's dog, which got under a moving car in some unexplained manner, held, that the mere fact that the car was, at the time of the accident, running at an excessive rate of speed, not shown to have been the cause of the accident, did not establish negligence on the part of the company. Dettmers v. Brooklyn Heights R. Co., 48 N. Y. S. 23, 22 App. Div. 488.

JETSAM AND FLOTSAM.

PRIVILEGE OF WITNESSES WHO ARE PARTIES TO THE SUIT.

It seems to be an unsettled point in the law of evidence at the present time, as to just what is the effect of a claim of privilege by a party to the suit who has put himself on the stand as a witness in his own favor. Does he waive all his privilege by offering to testify, or, if not, can inferences be drawn against his case from his refusal to give all the evidence in his power? In the ordinary case, if a party to the suit can be shown to have withheld evidence of any sort bearing on the merits of the case without any excuse for its non-production, this is allowed to count heavily against him. Wylde v. Northern R. R. Co., 53 N. Y. 156. But if he refuses to give further evidence on the ground of privilege, though logically there is a strong probability that he is keeping back the evidence because he knows that it would be harmful to his case, still on theoretical grounds this should cause no inferences to be drawn, for otherwise the privilege becomes a mere nullity. Indeed, this seems to have been the fundamental idea of a privilege, that the claim of it was perfectly proper and could never be used against the witness. Rose v. Blackmore, Ryan & Moody, 382.

From this point of view a recent Massachusetts case seems logically indefensible. The defendant called as a witness a former attorney of the plaintiff, and asked him as to certain confidential communications made to him by the plaintiff. On the claim of privilege by the attorney conducting his case, the court ruled that the plaintiff in person must assert or waive his privilege, and take the responsibility of it on himself. To avoid the inference that he was withholding evidence which might hurt his case, the plaintiff then waived his privilege, but took exceptions to the ruling. The supreme court held, however, that there was no error, for while the plaintiff had not waived his privilege by going on the stand himself, yet even if he had refused to allow his attorney to testify, this would have been a proper subject of comment and inference by the jury. McCooe v. Dighton R. R. Co. (Mass.), 53 N. E. Rep. 133.

It cannot be doubted, however, that the two positions taken by the court are logically inconsistent, for if the party still has its privilege, then no inferences should be allowed from his asserting it. This seems to be the English law to-day. Wentworth v. Lloyd, 10 H. L. C. 589. See also Bigler v. Rehler, 43 Ind. 112. In this country the point is not settled. In criminal cases there is a square conflict, some courts holding that the defendant waives all his privileges by going on the stand, and others that he waives none. Compare Commonwealth v. Nichols, 114 Mass. 285, and Chesapeake Club v. State, 63 Md. 446. In civil cases there seems to be very little authority on the point, and it is doubtful how far the principal case would be followed. While not logical, it takes, in the actual result reached, a convenient position between the two extremes of complete waiver of all privileges and waiver of none, with no inferences to be drawn. The party is protected in that he is not obliged to give evidence tending to incriminate himself, nor can his attorney without his consent give evidence which might subject him to a prosecution for perjury, and yet his opponent is not made to suffer by the exercise of this safeguard, and the merits of the case are made to appear directly or by a legitimate inference. For these practical reasons the decision seems satisfactory and may very probably be followed.—*Harvard Law Review.*

BOOK REVIEWS.

PATTISON'S COMPLETE MISSOURI DIGEST, VOL. 4.

This is the last volume of Mr. Pattison's Complete Missouri Digest. We have heretofore made mention of previous volumes as they made their appearance, and it has given us pleasure to speak in warm praise of Mr. Pattison's labors and to congratulate Missouri practitioners upon the fact that they now have in compact shape a satisfactory digest of all Missouri decisions up to the present time. This volume is, like its predecessors, comprehensive, accurate and well prepared. It includes subjects from S to Z. Its statements of propositions of law are not merely copies of the head-notes of the cases, but bear evidence of the editor's own thought and originality. While concise and to the point, they are as full as need be for a proper and clear understanding of the points. This volume contains also a table of decisions of the St. Louis and Kansas City courts of appeals which have been passed upon by the supreme court, a table of all reported cases of the supreme court, a table of overruled cases, and a table showing where the cases cited may be found in the Southwestern Reporter. We do not well see how any Missouri attorney can get along without this digest. It is published by the Gilbert Book Co., St. Louis.

BEACH ON CONTRIBUTORY NEGLIGENCE.

The original edition of this work made its appearance in 1885, and, being the first American treatise on its distinctive subject, it was at once received with favor. Though the first attempt by Mr. Beach in legal authorship, its decided merit was recognized, and it was generously commended by the profession. It may be said that it has, for years, been looked upon as an authority upon the subject of contributory negligence. It had its second edition in 1892, the volume of the text as well as the citations of cases being substantially increased. The present edition is by Mr. John J. Crawford of the New York Bar, whose work

seems to have been of a high order. He has examined and added all the latest cases, some of which have introduced modifications of old principles and others applied old principles to new conditions. In its present condition practitioners will find the work of great value as illustrating the law upon a very important and practical topic. It may be said of this treatise that it is less of a digest and more of a philosophical treatise than most modern text books. The author has undertaken throughout the volume to discuss disputed points carefully and discriminatively. It is a handsome book of about seven hundred pages, has a good index and is beautifully printed and bound. Published by Baker, Voorhis & Co., New York.

AMERICAN STATE REPORTS, VOL. 64.

We find a number of interesting cases reported in this volume, among them is the case of Bobel v. People (Ill.), involving the question as to the sufficiency of the title to a statute. Following this case is a very exhaustive note, wherein all the authorities on the subject are reviewed. Another good case is Fifield v. Van Wyck (Va.), which is on the subject of conversion of realty into personalty by will, and also on the subject of a charitable trust. Following this case is an exhaustive note upon the subject of the unity and certainty required in charitable trusts. Buford v. Adair (W. Va.), has an interesting note on the subject of the effect of desertion of a wife on her property rights and her power to contract. This excellent series of reports is edited by A. C. Freeman, and is published by Bancroft-Whitney Company, San Francisco.

BOOKS RECEIVED.

State Trials, of Mary, Queen of Scots, Sir Walter Raleigh and Captain William Kidd. Condensed and Copied from the State Trials of Francis Hargrave, Esq., London, 1776, and of T. B. Howell, Esq., F. R. S., F. S. A., London, 1816, with Explanatory Notes. By Charles Edward Lloyd. Chicago: Callaghan and Company, 1899. pp. 260, Cloth. Price $3.00.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACCIDENT INSURANCE—Policy—Accidental Death.—Under an accident policy requiring the claimant thereunder, in case of the death or disability of the insured, to furnish direct and positive proof that the death or disability resulted proximately and solely from accidental causes, the testimony of eyewitnesses to the death of the insured is not required, where there was no witness, but the furnishing of such circumstantial evidence as was afterwards sufficient to satisfy a jury that the death resulted from one of the causes insured against must be deemed to have been a sufficient compliance with the requirement.—PREFERRED ACC. INS. CO. OF NEW YORK V. BARKER, U. S. C. C. of App., Fifth Circuit, 93 Fed. Rep. 158.

2. ADVERSE POSSESSION—Interruption.—Where the statute of limitations is interposed in an action of ejectment, and it is shown that the original seizure was a disseisin, any subsequent act or declaration of the claimant, or his predecessor in title, which does not estop the claimant to plead the statute, nor suspend the right of the holder of the title to prosecute an action to recover possession, will not be sufficient to arrest the running of the statute. Neither a mere offer to buy within the 21 years, nor an acknowledgment by the claimant within that time that the title was in another, or that the claimant did not own the land, will have that effect.—MCALLISTER V. HARTZELL, Ohio, 53 N. E. Rep. 715.

3. ANIMALS — Recovery for Services of Unlicensed Stallion.—There can be no recovery for the services of an unlicensed stallion, a penalty being imposed by the statute for standing a stallion without a license.—SMITH V. ROBERTSON, Ky., 50 S. W. Rep. 852.

4. APPEAL—Joint Judgment.—It is within the appellate court's discretion to reverse as to one and affirm as to the other of two joint tort-feasors, who might have been sued separately, but were joined and included in one judgment.—MISSOURI, K. & T. RY. CO. OF TEXAS V. ENOS, Tex., 50 S. W. Rep. 928.

5. ASSAULT—Complaint—Sufficiency. — A complaint states a cause of action which, in effect, alleges that the defendant did maliciously assault the plaintiff, in this: That he did, by the hand of his servant, and within the scope of the servant's employment, strike the plaintiff, and incite a vicious dog to bite him, which, urged thereto by the defendant and his servants, acting within the scope of their employment, did bite him.—FORAN V. LEVIN, Minn., 78 N. W. Rep. 1047.

6. ATTACHMENT—Motion to Discharge.—A defendant in an attachment proceeding may move to discharge the attachment, although he may have disposed of his entire interest in the property, or, for other reasons, at the time may have no further interest therein.—SYMNS GROCERY CO. V. SNOW, Neb., 78 N. W. Rep. 1066.

7. BANKRUPTCY—Acts of Bankruptcy—Preference.—Under Bankrupt Act 1898, § 3, cl. 3, providing that it shall be an act of bankruptcy if a debtor shall have "suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings," and not vacated or discharged such preference "at least five days before a sale or final disposition of any property affected," where a creditor actually obtains a preference by entering judgment on a warrant of attorney previously given by the debtor, and levying execution on his stock in trade, the debtor being then

insolvent, such debtor commits an act of bankruptcy if he fails to discharge such preference by filing his voluntary petition in bankruptcy (having no valid defense against the debt or the lien obtained by the levy), although he does not in any degree procure the entry of the judgment, or even know of it.—IN RE MOYER, U. S. D. C., E. D. (Penn.), 93 Fed. Rep. 188.

8. BANKRUPTCY—Acts of Bankruptcy—Preference.—Where an insolvent merchant transferred his stock in trade to a creditor, part of the consideration being a payment made by the latter to a bank to make good the merchant's overdrawn account at the bank, the creditor having verbally agreed with the bank to be responsible for such overdrafts. Held, that the transfer was an act of bankruptcy, being made with intent to prefer either the creditor advancing the money (if the debt was considered as due to him), or else the bank, by means of the payment of the overdraft by the creditor as a surety or guarantor, and his reimbursement by the bankrupt.—GOLDMAN v. SMITH, U. S. D. C., D. (Ky.), 93 Fed. Rep. 182.

9. BANKRUPTCY—Collection of Assets.—Where a State court, in a suit between insolvent partners for dissolution of the partnership and settlement of its affairs, had appointed a receiver *pendente lite*, who had collected the assets, but no distribution to creditors could be made, for the reason that no answer had been filed in the suit or decree made therein, and meanwhile both partners were adjudged bankrupt and a trustee was appointed, held, that the court of bankruptcy could not order the receiver to surrender the property to the trustee, but that the latter would be authorized to apply to the State court to be substituted as plaintiff in the action, and to move that court for the entry of a decree in the case, and for an order directing the receiver to transfer the assets to him.—IN RE PRICE, U. S. D. C., S. D. (N. Y.), 92 Fed. Rep. 967.

10. BANKRUPTCY — Examinations in Bankruptcy.—The wife of a bankrupt, under examination as a witness at the instance of the trustee or creditors, may be questioned as to money or other property in her possession, and as to how and when the same was received or acquired, provided only that the testimony shows such questions to be reasonably pertinent to the subject of inquiry, the nature and location of the assets of the bankrupt.—IN RE FOERST, U. S. D. C., S. D., (N. Y.), 93 Fed. Rep. 190.

11. BANKRUPTCY—Voluntary Petition.—Under Bankruptcy Act 1898, § 51, requiring the clerk to collect the fees of officers in each case before filing the petition, except where the petition of a voluntary bankrupt is "accompanied by an affidavit stating that the petitioner is without and cannot obtain the money with which to pay such fees," such affidavit is not conclusive of the poverty of the petitioner; and, if circumstances appear casting doubt upon the truth of the affidavit,—as, that the petitioner appears by counsel not shown to be acting gratuitously,—it may be sent to the referee to investigate and report the facts as to the petitioner's ability to deposit the fees.—IN RE COLLIER, U. S. D. C., W. D. (Tenn.), 93 Fed. Rep. 191.

12. BENEVOLENT SOCIETY—Insurance—Suicide.—The endowment rank of the Supreme Lodge Knights of Pythias, which was the insurance branch thereof, was, by the charter of the association, to be governed by laws enacted by the supreme lodge. The supreme lodge created the board of control, which had charge of the endowment rank, and was authorized to alter and amend all laws pertaining to such rank. The board enacted a law avoiding policies for suicide, and reported it to the supreme lodge, which referred it to the committee of the endowment rank, which reported approving the law, and the supreme lodge approved the report by a *viva voce* vote. Held, that this was the enactment of the law by the supreme lodge.—SUPREME LODGE KNIGHTS OF PYTHIAS v. TREBBE, Ill., 53 N. E. Rep. 730.

13. BILLS AND NOTES — Assignment. — In a controversy as to whether notes were assigned absolutely or as collateral, the fact that the assignor testified in a suit by creditors that he had no interest in the notes is not conclusive that the assignment was absolute.—MEUTH v. LONG'S ADMR., Ky., 50 S. W. Rep. 967.

14. BILLS AND NOTES — Consideration — Pleading. — An answer to a suit on a promissory note, averring that there was no consideration for it moving to the promisor, is not sufficient as a defense, as it does not preclude the possible fact that there was detriment or loss to the promisee, which constitutes a consideration for a promise as well as a benefit to the promisor.—DALRYMPLE v. WYHER, Ohio, 53 N. E. Rep. 713.

15. BILLS AND NOTES — Corporations — Liability of Directors.—Where a note made by an officer was indorsed by the corporation, in an action by the payee to recover of the directors, under a statute making them liable for debts of the corporation in case of failure to file their annual report as required, parol evidence is admissible to show that the corporation was in fact the principal debtor; the note being given for its accommodation.—WITHEROW v. SLAYBACK, N. Y., 53 N. E. Rep. 681.

16. BILLS AND NOTES — Evidence.—In an action by the holder of a bill against the drawee, it was error to exclude proof that the latter held property of the maker sufficient to pay the draft, since, if this were true, he was liable under his contract to accept the draft, whether or not there was a condition attached thereto which was not performed.—FOWLER v. MCPHEE, Colo., 56 Pac. Rep. 1118.

17. BILLS AND NOTES—Laches of Holder.—A promise to pay a note after maturity by an indorser, or a part payment thereon by him, with a full knowledge of the laches of the holder in respect to demand and notice of non-payment constitutes a waiver of such laches.—AMOR v. STOECKELE, Minn., 78 N. W. Rep. 1046.

18. BILLS AND NOTES—Waiver of Protest.—Testimony of plaintiff that before the note in suit became due the maker called on him and said that he could not pay the note, and that it would be useless to put it in the bank to have it protested, and that if he was not pushed he would be able to pay eventually, is sufficient to go to the jury on the question of waiver of protest.—JONES v. ROBERTS, Penn., 43 Atl. Rep. 128.

19. BUILDING AND LOAN ASSOCIATION—Stock—Exemption.—The beneficial interest which a husband has in a homestead owned by his wife does not deprive him of his exemption, to the extent of $1,000 in stock of a building and loan association, under Laws 1887, Act No. 50, § 16, providing therefor, except where the shareholder has a homestead exempted under the general laws of the State.—MORLEY BROS. v. NATIONAL LOAN & INVESTMENT CO., Mich., 78 N. W. Rep. 1078.

20. BUILDING AND LOAN ASSOCIATIONS — Usury.—Where a pretended subscription to stock in a building and loan company, and the becoming an ostensible member of the association, was a scheme to avoid the usury laws, and such contract and the contract for the loan were one transaction, the contract is usurious, so that the payments made on the subscription should go toward the extinguishment of the loan.—COTTON STATES BLDG. CO. v. REILY, Tex., 50 S. W. Rep. 961.

21. CARRIERS—Passengers—Negligence.—It is negligence *per se* for a passenger to remain on the platform of a moving trolley car, where there are vacant seats inside the car, though the injury to the passenger was caused by a collision, and he might have been injured had he been inside the car.—THANE v. SCRANTON TRACTION CO., Penn., 43 Atl. Rep. 136.

22. CARRIERS—Passenger — Negligence. — There is a breach of duty on the part of a carrier; its train being stopped at a station where there is no platform, and the distance from the ground to the first step is three feet, and the employees, without furnishing a stool, or other means to facilitate her entry, inviting a lady passenger to board the train, assuring her that they will assist her to board the car in safety, which they fail to do—the only assistance being by taking hold of

one of her arms.—ILLINOIS CENT. R. CO. v. CHEEK, Ind., 53 N. E. Rep. 641.

23. CARRIERS OF GOODS—Interstate Commerce Law—Rates.—A railway contract, whereby a shipper of lumber is allowed a special rate, in no event to exceed two cents per 100 pounds, which gives such shipper a preference of from one to two cents a pound over other shippers of lumber, is in violation of the interstate commerce law, so that it cannot be enforced as relating to interstate shipments.—KIZER v. TEXARKANA & FT. S. RY. CO., Ark., 50 S. W. Rep. 871.

24. CONVERSION—Pleading — Allegations of Ownership.—In conversion, where damages only are recoverable, it is sufficient to allege plaintiff's ownership and possession on the date the property was converted, as distinguished from on the date of the commencement of the action.—BABCOCK v. CALDWELL, Mont., 56 Pac. Rep. 1081.

25. CORPORATIONS—Acts of Officers — Estoppel. — A check was signed by the treasurer of a company, and indorsed by the president, and transferred by the payee to a third person, who had no knowledge that, under the by-laws of the company, the treasurer had no authority to draw checks. After the check had been protested, the indorser deposited money to the credit of the company to pay it, but the company appropriated the money to its own use. Held, that it was thereby estopped to deny the authority of the treasurer to issue the check.—WAYNE TIT. & TRUST CO. v. SCHUYLKILL ELEC. RY. CO., Penn., 43 Atl. Rep. 135.

26. CORPORATIONS—Capital—Conversion.—An action by an assignee of a corporation against incorporators who constituted the first board of directors, to recover the difference between the amount of capital actually paid into the treasury and the amount stated in the articles as having been paid to the first board of directors, as required by Rev. Stat. 1889, § 2768, is not an action for conversion. — HEQUEMBOURG v. EDWARDS, Mo., 50 S. W. Rep. 908.

27. CORPORATIONS—Estoppel to Deny Corporate Existence.—Where defendants contend that they contracted the debt sued on as officers of a corporation, evidence that plaintiff dealt with the company on the representations of one of the defendants that it was a co-partnership is admissible to show that plaintiff, by reason of not having contracted with the company as a corporation, was not estopped to deny its corporate existence.—CHRISTIAN & CRAFT GROCERY CO. v. FRUITDALE LUMBER CO., Ala., 25 South. Rep. 566.

28. CORPORATION — Foreign Corporations — Copyrights.—Copyrights cannot be considered in determining the privilege tax on a foreign corporation, which Laws 1896, ch. 908, § 182, provides shall be computed on the basis of the capital employed by it in the State.—PEOPLE v. ROBERTS, N. Y., 53 N. E. Rep. 685.

29. CORPORATIONS — Implied Powers — Purchase of Plant.—The implied powers which a corporation has in order to carry into effect those expressly granted, and to accomplish the purposes of its creation, are not limited to such as are indispensable for these purposes, but comprise all that are necessary, in the sense of appropriate, convenient and suitable, including the right of reasonable choice of means to be employed.—CENT. OHIO NAT. GAS & FUEL CO. v. CAPITAL CITY DAIRY CO., Ohio, 53 N. E. Rep. 711.

30. CORPORATIONS—Judgment by Default.—To authorize a judgment by default against a corporation, the record or judgment entry should show that the person on whom process was served was such an officer or agent of defendant as by law was authorized to receive service on its behalf.—SOUTHERN HOME BLDG. & LOAN ASSN. v. GILLESPIE, Ala., 25 South. Rep. 564.

31. CORPORATIONS— Misappropriation of Assets by Director.—Creditors and stockholders of a corporation may sue the directors to compel them to account for assets misappropriated by them, and may have a receiver appointed, without first obtaining a judgment and return of "no property" against the corporation, or making a demand upon the directors to sue.—HODGES' ADMX. v. SOUTH FORK LUMBER CO., Ky., 50 S. W. Rep. 969.

32. CORPORATIONS — Powers — Purchase of Capital Stock.—A corporation, not prohibited by its charter, may purchase its own capital stock, yet such power cannot be exercised by an officer of the corporation without special authorization in that regard by its board of directors.—CALTEAUX v. MUELLER, Wis., 78 N. W. Rep. 1082.

33. COUNTIES—Claims—Enforcement.—Where a claim against a county for work and material has been filed with the board of county commissioners by the county auditor and disallowed, and no appeal has been taken, the board at a subsequent meeting has no jurisdiction to allow an amended claim presented to it for the same work and material, as Burns' Rev. St. § 7856, providing that, if a claim be disallowed, claimant may appeal or at his option bring an action against the county, furnishes the only remedies to which claimant can resort. MYERS v. GIBSON, Ind., 53 N. E. Rep. 646.

34. COURTS—Jurisdiction. — Jurisdiction is the authority by which courts and judicial officers take cognizance of and decide cases; power to hear and determine a cause. If a court has jurisdiction of the persons to the action, and the cause is the kind of a cause triable in such court, it has jurisdiction of the subject of the action; and has the power to render any rightful judgment therein.—PARKER v. LYNCH, Okla., 56 Pac. Rep. 1082.

35. CRIMINAL EVIDENCE—Declarations—Partnership—Embezzlement.—On trial of a partner for embezzlement of funds alleged to have come into the hands of the firm from the collection of a mortgage for complainant, statements of defendant's partner, made to complainant 15 months after the funds were collected, that the mortgage had not yet been collected, and that it was being foreclosed, are not part of the *res gestæ*, and are not admissible.—PEOPLE v. MCBRIDE, Mich., 78 N. W. Rep. 1076.

36. CRIMINAL LAW—Homicide—Self-Defense.—Though one has a reasonable apprehension, based on another's acts and threats, that the latter will, at the next opportunity, kill him, or do him serious bodily harm, he has no right to take the initiative, and slay the latter, before the latter has made any overt act indicating an intention to carry out his threats.—WRIGHT v. STATE, Tex., 50 S. W. Rep. 940.

37. CRIMINAL LAW—Receiving Stolen Goods—Possession.—Possession of stolen goods is sufficient to raise a presumption of guilt in receiving them with knowledge that they were stolen, where the possessor is not the thief, and fails to satisfactorily explain how he acquired possession.—STATE v. GUILD, Mo., 50 S. W. Rep. 909.

38. CRIMINAL LAW—Robbery—Indictment.—Where an indictment, under Rev. St. 1889, § 3530, alleges a robbery from a person by putting him in fear, it is error to charge to find defendant guilty if he robbed by force and violence to the person.—STATE v. CROWELL, Mo., 50 S. W. Rep. 893.

39. CRIMINAL LAW — Witnesses — Impeachment. — Where accused testifies, he may be impeached by proof of other specific crimes only where they tend to throw light on the crime charged.—STATE v. VANDIVER, Mo., 50 S. W. Rep. 892.

40. CRIMINAL PRACTICE — Forgery—Indictment.—An indictment which charges that on a certain day and at a certain place the defendant, with intent to defraud, did then and there feloniously forge a certain promissory note, of the tenor following, and then sets out in the indictment the note in full, states facts sufficient to constitute a public offense in plain and concise language, and sufficiently informs the defendant of the nature and cause of the accusation against him, and the word "forge," as used in said indictment, is not a mere legal conclusion.—STATE v. GREENWOOD, Minn., 78 N. W. Rep. 1042.

41. DEATH BY WRONGFUL ACT—Action by Parents.—In an action by parents, under the statute of Texas, to recover for the death of their minor son, alleged to have been due to the negligence of defendants, it is proper for the jury, in assessing the damages, to consider what reasonable expectations the plaintiffs had of pecuniary benefits to be received by them from their son after he had reached his majority, as the statute provides for full pecuniary compensation to the parents for the loss of their son, and the damages are not restricted to the loss of benefits to which the plaintiffs had a legal right.—TEXAS & P. RY. CO. v. WILDER, U. S. C. C. of App., Fifth Circuit, 92 Fed. Rep. 953.

42. DEATH BY WRONGFUL ACT—Deadly Weapon.—Ky. St. § 4, giving a right of action to the widow and minor child "of a person killed by the careless, wanton or malicious use of firearms, or by any weapon popularly known as Colts, brass knuckles, slung shots, or other deadly weapon, or sand bag or any imitation or substitute therefor," embraces a killing with a weapon either in itself deadly, or deadly as used, and therefore embraces a killing with a bar of iron.—MOREHEAD'S ADMX. v. BITNER, Ky., 50 S. W. Rep. 857.

43. DEATH BY WRONGFUL ACT—Right of Action under Colorado Statute.—Non-residents aliens are not entitled to the benefit of the Colorado statute giving a right of action for death by wrongful act to the next of kin of the deceased, and cannot maintain an action thereunder.—BRANNIGAN v. UNION GOLD MIN. CO., U. S. C. C., D. (Colo.), 93 Fed. Rep. 164.

44. DEED—Cancellation of Instruments.—In an action by an administrator to have a deed of trust canceled on the ground that the purchase money note secured by the deed had been paid by intestate, but that the deed had never been released or the note surrendered, where the circumstances from which a presumption of payment might arise are set out in the petition, and it is averred that plaintiff has no actual knowledge as to payment, the petition need not allege the time, place or manner of payment.—JOHNSON v. LOCKHART, Tex., 50 S. W. Rep. 955.

45. DEED—Reservation—Construction and Effect.—A reservation in a deed is ineffectual to create title in a stranger to the conveyance, but may, when so intended by the parties, operate as an exception to the grant.—BURCHARD v. WALTHER, Neb., 78 N. W. Rep. 1061.

46. DIVORCE — Action in Foreign Jurisdiction.—A complaint by a wife alleging that her husband, whose residence was in New Jersey, had gone to North Dakota, and after a pretended residence there for a few months, commenced a suit against her for divorce, presents a case so inequitable as justifies a court of equity in the former State restraining its prosecution. KEMPSON v. KEMPSON, N. J., 43 Atl. Rep. 97.

47. DIVORCE—Alimony—Sale of Lands.—Under a decree for alimony authorizing a sale of a life estate in certain premises, and thereafter a sale of the remainder, the life estate was sold, and on application to sell the remainder the decree for alimony was modified, from which an appeal was prosecuted, and during its pendency the statutory redemption period from the sale of the life estate expired. Held, that the pendency of the appeal had not rendered the amount necessary to redeem uncertain, so as to authorize a redemption by suit in equity after the expiration of the redemption period.—HENDERSON v. CRAIG, Ill., 53 N. E. Rep. 736.

48. EJECTMENT — Adverse Possession—Boundaries.—Where one of two adjoining landowners erects a fence, with the consent of the other, on what is supposed by both to be the true dividing line, the other is not estopped from claiming to the true line, when it is ascertained.—HEDGES v. POLLARD, Mo., 50 S. W. Rep. 889.

49. EJECTMENT — Defenses — Adverse Possession.—Where, in ejectment, defendant's possession of the land in controversy was admitted, evidence that his grantor had been uniformly considered the owner in the community where the land was situated, for a period sufficient to establish defendant's claim of title by adverse possession, was admissible to show the character of plaintiff's possession.—EASTERN OREGON LAND CO. v. COLE, U. S. C. C. of App., Ninth Circuit, 92 Fed. Rep. 949.

50. EQUITABLE ASSIGNMENT—Lien.—A promise by a debtor to pay his creditor out of a designated fund, of which the debtor retains control, when the same is received by him, is a personal agreement only, and cannot be construed either as an equitable assignment of, or a lien on, the fund.—HALE v. DREESSEN, Minn., 78 N. W. Rep. 1045.

51. EVIDENCE—Deeds—Certified Copy of Records.—Under Rev. St. 1895, art. 2806, providing that copies of records of all public officers, certified to by the lawful possessor thereof, shall be admitted in evidence in all cases where the records themselves are admissible, a certified copy of the record of a deed, the authentication of which is insufficient to entitle it to registration, is inadmissible, since the thing copied is not a record of a public officer.—HEINTZ v. THAYER, Tex., 50 S. W. Rep. 929.

52. EXECUTION — Motion to Quash. — A motion to qaush an execution issued on a judgment enforcing a mechanic's lien is not a case involving title to realty, within the constitutional provision declaring that appeals may lie from courts of appeal to the supreme court where title to realty is involved; since, to give the court jurisdiction, a contest, such as an action of ejectment to remove cloud or set aside a conveyance, must arise—FORCE v. VANPATTON, Mo., 50 S. W. Rep. 906.

53. EXECUTION—Presumptions.—One levying an execution under a judgment in his favor on property in the debtor's possession is presumed to be entitled to the property, in the absence of evidence to the contrary.—CHRISTIAN & CRAFT GROCERY CO. v. MICHAEL, Ala., 25 South. Rep. 571.

54. EXPERT TESTIMONY — Hypothetical Questions.—A hypothetical question may be asked of an expert, where the hypothesis is based on facts supported by evidence, though it does not include all the facts in evidence, and omits evidence not in accord with the theory of the party propounding the question.—COLE v. FALL BROOK COAL CO., N. Y., 53 N. E. Rep. 670.

55. FEDERAL COURT—DIRECTING VERDICT — Involuntary nonsuits not being allowed in the federal courts where a plaintiff fails to appear when his case is called for trial and the State practice in such case is to enter an involuntary nonsuit, the proper procedure is to impanel a jury, and to direct a verdict for defendant for want of evidence to sustain plaintiff's cause of action.—PATTING v. SPRING VALLEY COAL CO., U. S. C. C., N. D. (Ill.), 93 Fed. Rep. 98.

56. FEDERAL COURTS—Jurisdiction.—A suit to enjoin the levy and collection of a special tax for local improvements by a city cannot be entertained by a federal court where the only ground of jurisdiction is a claim that the collection of the tax would be a taking of the complainant's property without due process of law, based solely on the ground that a legislative act extending the boundaries of the city to include the territory in question is void under the State constitution, as the right to the relief sought depends entirely on the validity of the city government,—a question which does not involve, and cannot be affected by, a construction of the federal constitution, but must be determined solely by the laws of the State.—MCCAIN v. CITY OF DES MOINES, U. S. S. C., 19 S. C. Rep. 644.

57. FEDERAL COURTS — Jurisdiction — Citizenship — Fraud.—A citizen of California, not entitled to sue adverse claimants of mining rights in his land in a federal court, conveyed the property to an alien. The grantee was a laborer, without means, and he agreed to pay only $600 as the price, though the land was worth $1,800; and he paid only $10 down, giving a mortgage for the balance. Shortly afterwards he sued in a federal court to quiet title. Held, that the facts did not show that the transfer was simulated for the purpose of conferring jurisdiction on the federal court.

—WOODSIDE v. CICERONI, U. S. C. C. of App., Ninth Circuit, 93 Fed. Rep. 1.

58. FEDERAL COURTS — Jurisdiction — Federal Question.—A claim made by a telephone company in its bill, in good faith, that, by reason of the construction of its system of poles and wires in the streets of a city with the consent of the city, a contract was created which entitles it to maintain such system where it was erected, and that such contract is impaired by an ordinance subsequently passed by the city, states a federal question, which gives a circuit court of the United States jurisdiction of a suit to enjoin the enforcement of the ordinance.—MICHIGAN TEL. CO. v. CITY OF CHARLOTTE, U. S. C. C., W. D. (Mich.), 93 Fed. Rep. 11.

59. FRAUDULENT CONVEYANCES — Assignment for Creditors.—The statement of an insolvent debtor, who had transferred a stock of goods to a trustee for the benefit of certain of his creditors, is not admissible to show fraud, in replevin by the trustee against an attaching officer, when such statement was written long after the trustee had taken possession under the deed.—FEARY v. O'NEILL, Mo., 50 S. W. Rep. 918.

60. FRAUDULENT CONVEYANCES—Continuing Business for Benefit of Creditors.—A manufacturing company executed a deed of trust on its property for the protection of a creditor. Subsequently the trustee took possession, and with the consent of both the creditor and debtor continued the business as before, buying new goods and raw material, which was manufactured. It was so run to help the debtor, and the creditor expected to get his money out, and turn the property back to the debtor, and the intention was to run in that way until enough was realized to pay the creditor. Held, that such possession was fraudulent as to other creditors.—GUTTA PERCHA RUBBER MFG. CO. v. KANSAS CITY FIRE DEPARTMENT SUPPLY CO., Mo., 50 S. W. Rep. 912.

61. HIGHWAYS—Negligence of Fellow Traveler.—Under Gen. St., § 2673, authorizing a recovery of damages by any person injured "by means of a defective road," from the party bound to keep it in repair, a gratuitous passenger on a wagon cannot recover for injuries occasioned by the wagon's entering a defective part of a road and overturning, where the driver, by the exercise of ordinary diligence, could have avoided the accident, since a traveler on a highway cannot be injured, within the section, where a fellow traveler's negligence is a proximate cause of the injury.—BARTRAM v. TOWN OF SHARON, Conn., 43 Atl. Rep. 143.

62. HOMESTEAD—Liens—Attachment.—Held a homestead is not exempt from execution on a judgment entered on an indebtedness incurred for labor and material furnished in erecting a house on the homestead, and a lien for the sum due may be acquired in the action as well by levying an attachment as by docketing the judgment.—BAGLEY v. PEFFER, Minn., 78 N. W. Rep. 1113.

63. HUSBAND AND WIFE—Separate Estate—Boundaries.—A wife who has acquired title by adverse possession to a tract of land within the description of the deed of an adjoining owner, and not within her deed, is not bound by an agreement entered into by her husband, who is her general agent only in the management of her lands and business, and the adjoining owner, whereby they agree to have the tracts surveyed and "abide by the line as established by the surveyor and according to our deeds."—MCCOMBS v. WALL, Ark., 50 S. W. Rep. 876.

64. INTOXICATING LIQUORS—Illegal Sales—Evidence.—In a prosecution for an illegal sale of liquor, evidence of other sales than that charged is admissible to show the system of defendant with reference to selling liquors, and that the sale charged was in accordance therewith.—BENNETT v. STATE, Tex., 50 S. W. Rep. 945.

65. JUDGMENT AGAINST TRUSTEE.—In a suit to set aside an assignment for the benefit of creditors, the assignee represents all the beneficiaries of the trust; and a judgment against him is binding upon such beneficiaries, though they were not parties to the suit.—REJALL v. GREENHOOD, U. S. C. C. of App., Ninth Circuit, 92 Fed. Rep. 945.

66. JUDGMENT—Default.—A court of general jurisdiction possesses inherent power to vacate or modify its own judgments at any time during the term at which they are pronounced.—BRADLEY v. SLATER, Neb., 78 N. W. Rep. 1069.

67. JUDGMENTS — Parties — Vacation — Receivers.—Though not a party to a suit against the bank in a State court, the receiver of a national bank may appear in that court, and contest the validity of the judgment.—DENTON v. BAKER, U. S. C. C. of App., Ninth Circuit, 93 Fed. Rep. 46.

68. LANDLORD AND TENANT—Assignment of Lease.—Where the landlord acquiesces in the assignment of the lease by the tenant, the assignee becomes the landlord's tenant, and cannot assign the lease so as to relieve his property from the landlord's statutory lien for rents thereafter accruing, though he be not personally liable therefor.—MEYER BROS.' ASSIGNEE v. GAERTNER, Ky., 50 S. W. Rep. 971.

69. LANDLORD AND TENANT — Improvements — Removal.—The execution of a new lease, providing that the tenant should deliver the premises in as good condition as they were then in, does not deprive him of a right granted under a prior lease to remove improvements erected by him; the occupancy being continuous under both leases.—MCCARTHY v. TRUEMACHER, Iowa, 78 N. W. Rep. 1104.

70. LANDLORD AND TENANT—Leases—Holding Over.—There is not such a holding over by a lessee for a year as to make him liable for another year's rent where he gives seasonable notice that he will not retain the premises, and in proper time everything and all members of his family are removed from the premises, except from the bedroom, in which his mother was confined with sickness so severe that it was impossible to remove her until fifteen days later.—HERTER v. MULLEN, N. Y., 58 N. E. Rep. 685.

71. LANDLORD AND TENANT—Leases—Lessee's Right of Property.—The reservation, in a lease of land for an inclined railway, in favor of the lessor, of the right to open a street across a line of railway, or to cancel the lease on three months' notice, or to revoke at will the privilege of depositing stone on the land of the lessor at the terminus, does not affect the lessee's right of property in the land until the lessor has asserted his legal demand under some one of the reservations.—WITMAN v. CITY OF READING, Penn., 43 Atl. Rep. 140.

72. LANDLORD AND TENANT—Lien on Crop—Sales.—One who purchases grain from a tenant, without the consent of the landlord, under a lease reserving two-fifths of all of the crops as rent, and mingles it with grain of a like kind of his own in his warehouse, is liable to the landlord for a conversion of his share of the grain.—CAMPBELL v. BOWEN, Ind., 53 N. E. Rep. 656.

73. LANDLORD AND TENANT—Tenancy from Year to Year.—Where a tenant goes into possession of real estate, under a written lease, for one year, with the privilege of two years, executed by the landlord, and accepted and complied with by him, and remains in possession thereof four years, without any new agreement except as to the amount of rent payable, held, that this constitutes a tenancy from year to year.—INTFEN v. FOSTER, Kan., 56 Pac. Rep. 1125.

74. LIFE INSURANCE—Abortion.—Where an abortion which has caused insured's death is shown by the undisputed evidence to have been submitted to in order to get rid of an illegitimate fœtus, defendant need not establish by specific proof that there was no medical necessity for the abortion.—WELLS v. NEW ENGLAND MUT. LIFE INS. CO. OF BOSTON, MASS., Pa., 43 Atl. Rep. 126.

75. LIFE INSURANCE—Insurance — Proof of Claim.—Under an insurance contract providing for the pay-

ment of a certain sum in case of an incurable disability rendering assured incapable of manual labor, and requiring him to make due proof of his claim, and barring all claims not filed within a certain time, where assured in good faith assigns an adequate cause for his disability, he is not thereby precluded from alleging and proving, in an action brought after the time limited, other causes omitted through mistake or ignorance.—JARVIS v. NORTHWESTERN MUT. RELIEF ASSN., 78 N. W. Rep. 1089.

76. LIFE INSURANCE—Places of Prohibited Residence—Travel.—An assured permitted to travel through sections of country where residence is prohibited is not required to make a continuous journey in order not to violate the policy, but is entitled to make reasonable stops for purposes consistent with the character of a traveler; and, if sickness and death interrupt his travel in such locality, the policy is not invalidated.—CONVERSE v. KNIGHTS TEMPLARS' & MASONS' LIFE INDEMNITY CO., U. S. C. C. of App., Seventh Circuit, 93 Fed. Rep. 148.

77. MALICIOUS PROSECUTION — Instructions.—In an action for malicious prosecution, where the court charges that there are two things for plaintiff to establish; that is, that there was no probable cause to believe that plaintiff committed the offense for which he was prosecuted, etc., the latter clause does not invade the province of the jury.—SWEENY v. BIENVILLE WATER SUPPLY CO., Ala., 25 South. Rep. 575.

78. MASTER AND SERVANT—Injury of Servant—Joint Liability of Fellow-Servant and Master.—An employee of a corporation cannot be held jointly liable with the corporation for an injury to another employee alleged to have resulted from negligence, both on his part and on the part of the corporation, where it is not alleged that he was guilty of willful wrongdoing, or that he acted outside of his instructions or the scope of his employment.—BURCH v. CADEN STONE CO., U. S. C. C. D. (Ky.), 93 Fed. Rep. 181.

79. MASTER AND SERVANT — Negligence — Indemnity Policy.—The fact that the master holds an indemnity policy insuring him against liability on account of injuries to his employees by his negligence, and requiring the company to defend an action against him on account of such injuries, and it does so, is not evidence tending to show an admission of negligence on the part of the insured or insurer.—MANLEY v. MINNEAPOLIS PAINT CO., Minn., 78 N. W. Rep. 1050.

80. MECHANICS' LIENS—Husband and Wife.—Burns' Rev. St. 1894, § 6968, which provides that "whenever repairs or improvements are made on real property of the wife by order of the husband, with her consent thereto, in writing, delivered to the contractor or the person performing the labor or furnishing the materials, she alone shall be personally liable," does not apply to land owned by a husband and wife as tenants by the entireties.—TAGGART v. KEM, Ind., 53 N. E. Rep. 651.

81. MORTGAGES—Foreclosure—Attorney's Fees.—Under a mortgage stipulating that, on foreclosure, mortgagee may include counsel fees, together with all payments made by mortgagee for certain purposes, all of which payments shall be deemed to be secured by the mortgage, mortgagee cannot have such counsel fees included in the mortgage lien, since it is not specified that the mortgage shall secure them.—KLOKKE v. ESCAILLE, Cal., 56 Pac. Rep. 1113.

82. MORTGAGE—Purchase Money Mortgages.—A mortgage executed by defendant to plaintiff to secure money advanced for the payment of other mortgages, which defendant had agreed with a third person to pay as a part of the price of the land bought of such person, is given for purchase money, within Sand. & H. Dig. § 3713, excepting such mortgages on a homestead from those in the execution of which the mortgagor's wife must join.—FARNSWORTH v. HOOVER, Ark., 50 S. W. Rep. 865.

83. MORTGAGES—Waste.—The right of action against the mortgagor for waste, where the mortgagee is not entitled to possession, is for the injury to the security, rather than to the freehold.—SMITH v. FRIO COUNTY, Tex., 50 S. W. Rep. 958.

84. MUNICIPAL CORPORATION—Construction of Sewers.—The construction of sewers is not within the scope of the corporate authority of a town. The municipal officers are the only tribunal authorized to construct sewers at the expense of a town. For the torts of this tribunal the town is not responsible.—BRUNSWICK GASLIGHT CO. v. BRUNSWICK VILLAGE CORP., Me., 43 Atl. Rep. 104.

85. MUNICIPAL CORPORATIONS—Election of Officer by Board of Education.—Ky. St. § 3212, giving the board of education of a city of the second class the power "to make by-laws and rules necessary for the discharge of their duties," does not authorize a rule of the board requiring a vote of two-thirds of the members to elect a clerk whose election is provided for by statute; such a rule being in violation both of the common law and of Ky. St. § 445, and Civ. Code Prac. § 679, providing that the authority conferred upon three or more persons may be exercised by a majority of them concurring.—HEYKER v. HERBST, Ky., 50 S. W. Rep. 859.

86. MUNICIPAL CORPORATIONS — Obstructions in Streets — Negligence.—Where city authorities allow a mowing machine to be left standing in a street, and a team of horses run away, and, meeting another team near the machine, swerve, and run into it, thereby injuring the driver, the proximate cause of the injury is the failure to remove the machine.—CITY OF MT. VERNON v. HOEHN, Ind., 53 N. E. Rep. 654.

87. MUNICIPAL CORPORATIONS—Street Assessments.—The owner of land through which a street was illegally opened is estopped to urge the invalidity in defense to an action for an assessment for the improvement thereof, where he was served with the required notice of the improvement, and made no objections thereto.—BUSENBARK v. CLEMENTS, Ind., 53 N. E. Rep. 665.

88. MUNICIPAL CORPORATIONS—Taxation of Outlying Property.—All property within the limits of a city is subject to taxation for city purposes, without regard to the benefits received.—HUGHES v. CARL, Ky., 50 S. W. Rep. 852.

89. NEGLIGENCE — Master and Servant — Unguarded Machinery.—While it is the duty of the master to exercise ordinary care and foresight in providing safe machinery and a reasonably safe place in and about which the helpers and other laborers are required to work, yet the fulfillment of this duty must be tested by the experience of employees who are themselves in the exercise of due care and vigilance, and not with reference to those who are themselves negligent or venturesome or the unfortunate victims of simple and unaccountable accidents. Absolute safety is not guaranteed to the laborer by the contract of employment.—CUNNINGHAM v. BATH IRON WORKS, Me., 43 Atl. Rep. 106.

90. NEGLIGENCE — Telegraphs and Telephones.—Defendant turned over to another company for use a cross-arm on its telephone pole, and it took possession and strung wires thereon. A city employee, having no connection with either company, went on the pole to make an alteration in the position of the wires, and in doing so a wire caught on an insulator on such cross-arm, which had not been placed thereon by the defendant, precipitating it to the ground, and resulting in plaintiff's injury. Held, that defendant was not liable.—QUILL v. EMPIRE STATE TELEPHONE & TELEGRAPH CO., N. Y., 53 N. E. Rep. 679.

91. OFFICERS—Deposits in Court—Liability of Receiver.—Under Ky. St. § 411, providing that each circuit court may select by order a bank as a place of deposit for money paid into court, and that such bank shall execute bond, where the court has failed to select a depository the receiver or commissioner is liable only for negligence in the selection of a bank for the deposit of money paid into court, or in leaving the money there, and is not an insurer of the solvency of

the bank selected by him.—JOHNSON v. FLEMING, Ky., 50 S. W. Rep. 855.

92. OFFICERS DE FACTO AND DE JURE.—Where a *de jure* county officer has been excluded from the office pending an election contest, and the judgment in his favor declares him to have been entitled to the office from the beginning of the term, he may recover the salary for that period, except for such time after the judgment as he unreasonably neglects to qualify by filing a bond, though it has been paid to the *de facto* officer by the county commissioners (with knowledge, however, as individuals, of the pendency of the contest), and though the *de jure* officer does not take the oath till after judgment.—RASMUSSEN v. BOARD OF COMRS. OF CARBON COUNTY, Wyo., 56 Pac. Rep. 1098.

93. PARTIES—Substitution of Plaintiffs.—Under the statute of Tennessee (Shannon's Code, § 4589) which provides that no civil suit shall be dismissed for want of necessary parties, but the court shall have power to strike out or insert in the writ and pleadings the names, either plaintiffs or defendants, so as to have the proper parties before it, a court may substitute as plaintiff in a suit brought in behalf of an estate the name of an administrator duly appointed; and the suit will continue, although the original plaintiff, who sued as administrator, had never qualified as such, and not only had no authority to bring the suit, but his doing so was a misdemeanor, under the statute.—PERSON v. FIDELITY & CASUALTY CO., U. S. C. C. of App., Sixth Circuit, 92 Fed. Rep. 965.

94. PARTNERSHIP—Commissioner to Settle Partnership Estate.—A commissioner was appointed in a suit for the settlement of a partnership, and empowered to take charge of all the partnership property, collect the assets, pay the debts, and divide the remaining property between the partners. On the making of his final report, after nearly 10 years, a reference became necessary to state his accounts. Held, that the costs of such reference, including the fee of the master, should be borne by the commissioner.—GUNN v. EWAN, U. S. C. C. of App., Eighth Circuit, 93 Fed. Rep. 80.

95. PRINCIPAL AND AGENT—Authority—Payments.—Authority from the payee to collect and receive, as his agent, the interest and principal of the debt, is not authority to collect or receive either the interest or principal before it is due.—PARK v. CROSS, Minn., 78 N. W. Rep. 1107.

96. PRINCIPAL AND AGENT—Recovery of Payments—Carriers.—A consignee of freight paid demurrage charges for car service, knowing that they could not be refunded by the railroad company without the consent of an association to which the money belonged, the railroad company's agent stating that the consignee would have no trouble in getting the charges back. Held, that such statement was not binding on the association, the agent not being shown to have had authority to make it.—GULF CITY CONST. CO. v. LOUISVILLE & N. R. CO., Ala., 25 South. Rep. 579.

97. PRINCIPAL AND SURETY—Estoppel.—When sureties, for the purpose of enabling their principal to assume the duties, and enjoy the emoluments, of an office to which he has been appointed, execute an official bond, containing a recital that the appointment has been duly made, they will not be permitted afterwards, when sued on such bond, to deny the validity of the act creating the office.—BLACO v. STATE, Neb., 78 N. W. Rep. 1056.

98. PUBLIC LAND—Vendor and Purchaser—Rescission.—A person holding a contract to purchase lands from one supposed to be the owner, agreed to convey them to another as soon as he procured the title. The lands were afterwards discovered to be public lands, and the parties to the latter contract then agreed that the purchaser should obtain title by filing on the lands as a homestead, and pay the vendor the price originally stipulated, less any damages which the vendor might recover from his vendor for the failure of title. Held, that the agreement did not contemplate that the purchaser should procure the title from the government for the benefit of his vendor, and hence was not against public policy, because of Rev. St. U. S. §§ 2290, 2291, requiring the filer of a homestead entry to make affidavit that the entry is for actual settlement and cultivation, and not for any other person.—FRENK v. HOKE, Oreg., 56 Pac. Rep. 1093.

99. RAILROAD COMPANIES—Bridges—Inspection—Negligence.—In an action against a railroad for injury received in a wreck resulting from the bent of a bridge being washed out, the testimony showed that the stream was turbulent and dangerous, subject to sudden floods, which frequently destroyed portions of the bridge, which was an unsafe one, for that locality, and, instead of being built on stone abutments let down to bed-rock, or on sills bolted to the solid rock, was built on posts, and, when any of these washed out, bents were rested on ties or blocks placed on the surface. The company knew that a great rise had occurred in the stream the night before, but did not know of a heavy rain later in the night. Held, that it was negligent in running its train over the bridge the next morning without inspecting it.—COBB v. ST. L. & H. RY. CO., Mo., 50 S. W. Rep. 894.

100. RAILROAD COMPANIES—Duty to Persons on Track Near Railroad Station.—It is the duty of servants in charge of a train approaching a station in a town to give notice of the train's approach, and to use reasonable care to discover persons on the track; but, until they discover that such persons are oblivious of the danger, they are not required to check the speed of the train.—LOUISVILLE & N. R. CO. v. TAAFE'S ADMR., Ky., 50 S. W. Rep. 850.

101. RAILROAD COMPANIES—Right of Way—Abandonment.—Mere nonuser by a railroad company for a period of five years of a portion of a strip of land over which it has laid its tracks, by reason of obstructions caused by a land slide, the remaining part being used by it for storing cars, is not an abandonment of its easement in the strip.—SCARRITT v. KANSAS CITY, ETC. RY. CO., Mo., 50 S. W. Rep. 905.

102. RECEIVERS — Appointment—Notice.—A bill by a judgment creditor of a husband to set aside as fraudulent a transfer to the wife of mineral lands, machinery, and personal property, and the transfer thereof by her to a corporation, did not allege the insolvency of either grantee, nor show that the realty was not sufficient to satisfy the judgment. It alleged that the company was constantly operating the mines, and appropriating the proceeds, and that, if notice of the appointment of a receiver were given, the husband, who controlled the company, would dispose of or manipulate the personalty and the profits from the realty so as to defeat the creditor's rights. The husband and wife resided in the place where the corporation did business and where the bill was filed. Held, that the appointment of a receiver without notice was unauthorized.—GILBREATH v. UNION BANK & TRUST CO., Ala., 25 South. Rep. 581.

103. RELEASE AND DISCHARGE — Rescission.—An agent, employed to sell goods on commission for a stated period, at the end thereof pretended to exhibit and account for all unsold goods, thereby showing a considerable shortage in his accounts, representing, apparently, property sold and the proceeds converted by such agent to his own use, and then gave a note and mortgage to his principal for a part of such shortage. The principal thereafter discovered other unsold goods in the possession or under the control of the agent, of less value than the balance of the shortage in excess of the note and mortgage, and subsequently enforced such mortgage, but did no other act in ratification of the settlement. Held, that the principal might rescind the settlement as to the goods discovered after it was made, and reclaim such goods.—GRAY v. D. M. OSBORNE & CO., Wis., 78 N. W. Rep. 1079.

104. REMOVAL OF CAUSES — Power to Remand Before Term at Which Record is Returnable.—Where, after the filing of a petition for removal, but before the first day of the next term of the federal court to which the

record is returnable, application is made to such court for extraordinary relief, such as the appointment of a receiver to preserve the property, and by leave the record is filed, the court may then inquire into its jurisdiction; and if it will be without jurisdiction of the cause when the first day of the next term arrives, and especially if the suspension of jurisdiction until that time is likely to result in injury to the parties, it may at once remand the cause to the State court.—RYDER v. BATEMAN, U. S. C. C., W. D. (Tenn.), 93 Fed. Rep. 16.

105. RES JUDICATA — Findings Outside the Issues.—Plaintiff attached firm property, and defendants replevied it; and the only issues in the replevin action were whether plaintiff's debtor was a member of the firm, and whether the property was lawfully attached. Held, that a finding as to the value of the interest of plaintiff's debtor in the firm was not within the issues, and was not conclusive on defendants in an action on the replevin bond.—HANNON v. O'DELL, Conn., 48 Atl. Rep. 147.

106. SALES — Rescission by Seller—False Representations.—False representations by the buyer as to his financial responsibility, which induced a sale, entitle the seller to rescind, though the buyer intended to pay for the goods, and was solvent when such representations were made.—RICHARDSON-ROBERTS-BYRNE DRY GOODS CO. v. GOODKIND, Mont., 56 Pac. Rep. 1079.

107. SPECIFIC PERFORMANCE — Railroad Construction Contract.—A court of equity will not decree specific performance of a contract to build a railroad, though the object of the suit is but to allow complainant to complete a construction contract, and to restrain the company from making other conflicting contracts, and disposing of securities pledged to him for the work contracted for.—STRANG v. RICHMOND, ETC. R. CO., U. S. C. C., E. D. (Va.), 93 Fed. Rep. 71.

108. TAXATION — County Board of Equalization—Power.—Boards of county commissioners, sitting as boards of equalization, have the right to raise or lower the assessed valuation of all property in a particular district, without notice to each or any owner of such property; the statute (Rev. St. § 2574) giving sufficient notice to each individual owner of property in such district to permit the raising or lowering of the entire valuation of the district.—STATE v. ARMSTRONG, Utah, 56 Pac. Rep. 1076.

109. TAXATION—Validity of Assessment.—The power house and other buildings of an electric street railroad company were situated on a tract of land, a part of which was owned by the company, and a part held under a lease for 25 years, which bound the company to pay the taxes thereon. Held, that the company might properly be regarded as the owner of the entire property, for purposes of taxation, and its assessment as an entirety was valid.—NEW YORK GUAR. & INDEM. CO. v. TACOMA RY. & MOTOR CO., U. S. C. C. of App., Ninth Circuit, 93 Fed. Rep. 51.

110. TENANTS IN COMMON.—A widow having right of dower, and with her children right of homestead, in a lot, for the common benefit of which and four other lots a private alley was established, and who, with her children, is in possession of the lot, neither homestead nor dower being assigned, is a tenant in common in the alley with the owners of the other lots.—GORALSKI v. KOSTUSKI, Ill., 53 N. E. Rep. 720.

111. TRESPASS ON MINING PROPERTY — Intent—Measure of Damages.—While one who willfully and intentionally takes ore from another's mine is not entitled to deduction from the value thereof for labor bestowed, where the taking was inadvertent, and under an honest mistake as to the ownership of the land, only the value of the property in its original place can be recovered.—DURANT MIN. CO. v. PERCY CONSOL. MIN. CO., U. S. C. C. of App., Eighth Circuit, 93 Fed. Rep. 166.

112. TRUST—Parol Evidence.—A resulting trust is not within the statute of frauds, and parol testimony is admissible to prove the purchase for, and payment of the consideration by, the beneficiary, even though the deed recites that the consideration was paid by the grantee.—CHICAGO, ETC. R. CO. v. FIRST NAT. BANK OF OMAHA, Neb., 78 N. W. Rep. 1064.

113. TRUSTS—Power of Trustee — Mortgages.—Where the grantee in a trust deed was authorized to take up two mortgages, foreclosure of which was threatened, and to hold the property until a favorable time for its sale, and an advantageous sale was not possible, he had implied power to mortgage the property to pay the two mortgages.—GILBERT v. PENFIELD, Cal., 56 Pac. Rep. 1107.

114. TRUSTS—Settlement.—Where one occupies the nominal position of trustee, but his real obligation is contractual, and he is unable to perform it, his acts in obtaining a settlement with the beneficiary should not be subjected to the suspicion that would attach to a trustee who has violated the trust.—DALRYMPLE v. CRAIG, Mo., 50 S. W. Rep. 884.

115. VENDOR AND PURCHASER—Agreement by Vendor to Pay Assessment.—One deeded land situated between two streets, but not abutting on either. At the time, an ordinance had been passed, and proceedings were pending to open a street which would front on the land. The vendor executed a bond reciting that, whereas he had sold certain described property to the grantee, "subject to a special assessment now pending" thereon, he agreed to "pay said costs for opening" such street. Held, that the vendor was only bound to pay the assessment for opening the street under the proceedings then pending, and not that for opening the street under subsequent proceedings, the former having been dismissed.—HAGEMAN v. HOLMES, Ill., 53 N. E. Rep. 789.

116. VENDOR AND PURCHASER — Assignment of Contract — Foreclosure.—Assignees of a purchaser, who were made parties to a suit to foreclose all rights under the contract, cannot complain that the privilege given the purchaser, of time in which to perform the contract, did not, in terms, include them, where they did not seek to perform as his assignees.—ODD FELLOWS' SAV. BANK v. BRANDER, Cal., 56 Pac. Rep. 1109.

117. WILLS — Construction.—Where the sum of the acres devised to different persons equals the number of acres which the will describes as being owned by testator in a single tract, to be divided among the devisees into designated parcels, and the tract contains more acres than the will calls for, the excess will be apportioned among the devisees in proportion to the number of acres named for each in the will.—BENNETT v. SIMON, Ind., 53 N. E. Rep. 649.

118. WILLS—Construction—Estate Devised.—Where a testatrix provides: "Sixth. The remainder of my estate I bequeath to my first husband's stepmother and her children. Her name is Rebecca Hand,"—held, that in the absence of any indication in the will that the testatrix intended that Rebecca Hand should take a life estate, and the children the remainder, they all took concurrent interests.—GORDON v. JACKSON, N. J., 43 Atl. Rep. 98.

119. WILLS—Contest of Codicil.—Where testator, who was quite an old man, living almost exclusively in the society of his wife and children, to whom he was greatly attached, added a codicil changing his will in accordance with what he said was their demands, reducing a legacy to a son of a deceased child, in the face of his announced decision that he would not do so, made a short time before, a verdict rejecting the codicil will not be set aside as against the evidence.—KRANKEL'S EXR. v. KRANKEL, Ky., 50 S. W. Rep. 863.

120. WITNESSES — Credibility—Remarks of Court.—A comment made by the judge, in the presence of the jury, which assumes that a witness is attempting to evade a question on cross-examination, and give testimony favorable only to the party calling her, is prejudicial error.—SCHMIDT v. ST. LOUIS R. CO., Mo., 50 S. W. Rep. 921.